

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Process Reform for Executive Branch Review of)	IB Docket No. 16-155
Certain FCC Applications and Petitions)	
Involving Foreign Ownership)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) hereby submits reply comments on the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ In this reply, Sprint urges the Commission to streamline and focus the Executive Branch review and thereby foster regulatory certainty, encourage investment, and advance national security goals.

DISCUSSION

The initial commenters express appreciation for the Commission’s goal of reforming the Executive Branch review of foreign ownership. Such changes plainly are needed because the current process “inflict[s] significant and unnecessary costs on the U.S. economy by hindering beneficial investment in the telecommunications sector.”² As Telstra notes, these “unintended

¹ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking, FCC 16-79 (rel. June 24, 2016) (“NPRM”).

² “A Comparative Analysis of Team Telecom Review,” attached to Letter from Ari Q. Fitzgerald, Hogan Lovells, to Marlene H. Dortch, FCC Secretary, IB Docket No. 16-155, at 1 (Aug. 18, 2016) (“Team Telecom Report”); *see also, e.g.*, Comments of Telstra at 2 (“Reform is necessary to fix a broken process, whose uncertainty, costs and delays discourage foreign investment in the U.S. telecommunications industry.”) (“Telstra Comments”); Comments of

consequences do not serve established U.S. policy, which favors trade liberalization and foreign direct investment in order to promote competition, innovation and economic growth.”³

To ensure that the Commission’s reform achieves its goals of improving “timeliness and transparency,”⁴ the Commission should: (1) adopt firm timelines for the Team Telecom process; (2) invite Executive Branch review only in circumstances that involve national security and foreign policy questions; and (3) adopt measures supported by the commenters to ensure that applicants can identify specific Executive Branch contacts and the specific issues under review.

Adopt Firm Timelines. In keeping with Sprint’s initial comments, the record reflects widespread support for a 90-day Team Telecom timeline.⁵ As the United States Telecom

Telecommunications Companies at 1-2 (“Reform is necessary to ensure that foreign investment in U.S. telecommunications companies and facilities is not obstructed or deterred by the uncertainty, costs and delays that currently characterize this process.”) (“Joint Comments”); Comments of BT Americas, Inc., Deutsche Telekom, Inc., Orange Business Services U.S. Inc., and Telefonica Internacional USA, Inc. at 4 (“The uncertainty of the application approval timeframe and the costs of deploying resources to respond to Team Telecom’s information requests during the review process also may have the unintended effect of discouraging foreign investment in United States entities.”) (“BT *et al.* Comments”). (Unless otherwise noted, all comments cited herein were filed in IB Docket No. 16-155 on August 18, 2016.)

³ Telstra Comments at 2-3.

⁴ NPRM ¶ 1.

⁵ Comments of the Satellite Industry Association at 3 (“SIA Comments”); Comments of the United States Telecom Association at 3 (“USTA Comments”); Joint Comments of CBS Corporation, 21st Century Fox, Inc., Univision Communications Inc. and the National Association of Broadcasters (“Broadcaster Representatives”) at 5; Comments of CTIA at 4 (“CTIA Comments”); Telstra Comments at 5 (“The proposed 90-day period for review with the potential for an additional 90-day extension in extraordinary cases will provide FCC licensees and their foreign investors with more certainty about the timing of the process, while affording the Executive Agencies a reasonable amount of time to conduct an effective review.”); Joint Comments at 2; Comments of TMT Financial Sponsors at 12 (“Financial Sponsor Comments”); Comments of INCOMPAS at 4 (“Given Team Telecom’s longstanding familiarity with the facts and issues that have arisen in foreign ownership review over the last two decades, a 90-day review period should be sufficient for Team Telecom to assess any national security or law enforcement implications stemming from reportable foreign ownership.”) (“INCOMPAS Comments”); Comments of T-Mobile USA, Inc. at 2 (“T-Mobile Comments”).

Association notes, “a commitment by all parties involved in the review process to adhere to an agreed-upon timetable should ensure that concerns and problems are addressed and remedied in a timely manner.”⁶ Moreover, a 90-day timeline would both be consistent with the timeline that governs the Committee on Foreign Investment in the United States (“CFIUS”) review process and “honor U.S. trade commitments regarding licensing timeframes.”⁷

Many parties also share Sprint’s view that to be effective this timeline must be properly structured and enforced. First, to ensure a timely review, the Commission should commit to launching the 90-day period by issuing its Public Notice within 10 or 15 days of receiving an application subject to Team Telecom review.⁸ Second, to advance transparency and focus the review on the relevant issues, the Team Telecom agencies should be required to issue a consolidated set of any follow-up questions within 45 days of the filing of the application. As Hibernia and Quintillion note, the “review process . . . would be greatly improved if the applicable Executive Branch agencies were required to advise applicants to any national security

⁶ USTA Comments at 3; *see also, e.g.*, INCOMPAS Comments at 4 (“Setting a firm, transparent and appropriate deadline for the completion of Team Telecom’s review is critical to maintaining a regulatory environment conducive to network investment and deployment, and to the efficient and effective administration of the Commission’s duties.”).

⁷ *See* Comments of Level 3 Communications, LLC at 2 (“Level 3 Comments”); *see also, e.g.*, SIA Comments at 3; Financial Sponsor Comments at 12; Joint Comments of Hibernia Atlantic U.S. LLC and Quintillion Subsea Operations, LLC at 8 (“Similar timeframes are warranted given that the Team Telecom agencies are involved in CFIUS review and the potential concerns of Team Telecom are typically a subset of the types of concerns that CFIUS might have.”) (“Hibernia/Quintillion Comments”); INCOMPAS Comments at 5; T-Mobile Comments at 7 (“The CFIUS process is designed to provide certainty to foreign investors in terms of timing and demonstrates the feasibility of reviewing complex ownership structures involving multiple parties, jurisdictions, and lines of business within 90 days or less.”).

⁸ Comments of Sprint Corporation at 2; USTA Comments at 3 (“the Commission [should] commit to review and, unless an application is deemed unacceptable for filing, place all applications on public notice within 10 days of receipt”).

or law enforcement concerns identified by Team Telecom as early in the process as possible.”⁹

Third, while Sprint agrees that, under some limited circumstances, the Commission should grant the Executive Branch agencies additional time to review an application or petition, the agencies should be obligated to submit a request for additional time no later than day 75. This request must be supported and contain “more than a statement that the Executive Branch needs more time.”¹⁰ Otherwise, exceptions to the 90-day timeline could “ultimately swallow the rule.”¹¹ Additionally, Sprint agrees with USTA that, rather than adopting a one-time additional 90-day extension, the Commission should permit “up to three 30-day extensions for a maximum extension of 90 days.”¹² Any Executive Branch requests for such second or third 30-day extensions should be fully supported and filed early enough in the review period to ensure that the Commission can carefully consider the merits of the request.

Prioritize and Focus Executive Branch Review. In establishing the interagency foreign ownership review process, the Commission noted its expectation that “national security, law enforcement, foreign policy and trade concerns [are likely] to be raised only in very rare circumstances.”¹³ Over time, however, more and more applications have been referred to the

⁹ Hibernia/Quintillion Comments at 8.

¹⁰ USTA Comments at 4; *see also, e.g.*, Financial Sponsor Comments at 12 (noting that the “FCC must also be willing and able to reject requests for an additional 90-day period when not adequately supported by Team Telecom”).

¹¹ Level 3 Comments at 5.

¹² USTA Comments at 4; *see also, e.g.*, CTIA Comments at 5 (“Any extension of the Executive Branch’s initial 90-day review period should be limited to, at most, one additional 90-day period, which should be exercised only in unusual circumstances. . . . In addition, the Commission should adopt its proposal requiring the Executive Branch to file substantive status updates every 30 days during the extension period.”).

¹³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶ 63 (1997).

Executive Branch agencies for review. Sprint agrees with Verizon that the Commission should “narrow the types of license applications it refers to the Executive Branch to just those instances where there is a cognizable foreign ownership concern.”¹⁴ The resources of the Executive Branch agencies are already strained as they review the applications under the Commission’s current referral process. If the volume of referrals increases and includes applications for which there are no foreign policy implications, the review periods are likely to increase, not decrease. Furthermore, inviting the Executive Branch agencies to review additional applications will only impede their ability to prioritize and focus on any applications that may raise foreign policy or national security concerns. If everything is a priority, nothing is a priority. Accordingly, “transactions where there is no cognizable foreign nexus (such as pro forma transactions . . .) should not be referred, even if there is transfer of an international Section 214 authority.”¹⁵

Similarly, applications by parties whose ownership has been reviewed by Team Telecom should not be referred for an additional review unless there has been a material change in the applicant’s foreign ownership. As a number of companies recognize, “requiring an applicant to repeat Team Telecom review, where there has been no material change in foreign ownership, is

¹⁴ Comments of Verizon at 1.

¹⁵ *Id.*; see also, e.g., USTA Comments at 2 (“The Commission should avoid any ‘mission creep’ by declining to broaden the scope of applications that would be subject to any rule changes adopted in this proceeding.”); Joint Comments at 2 (“The Commission should also limit the applications and petitions referred to Team Telecom to those that could potentially raise national security, law enforcement, trade policy, and foreign policy concerns.”); Financial Sponsor Comments at ii (“Certain categories of applications currently subject to Team Telecom review should be removed entirely from this process.”); Hibernia/Quintillion Comments at 4 (“Where an applicant is subject to an existing LOA or NSA, it already has undergone Team Telecom’s review process for national security and law enforcement concerns. Automatic Commission referral of application in those circumstances introduces unnecessary delays and may result in the waste of time and resources by both the applicant and the government.”); T-Mobile Comments at 15 (“[T]he Commission [should] refer only applications and petitions containing new, not previously reviewed foreign ownership or material changes in foreign ownership.”).

not an efficient use of Team Telecom’s time and resources and is not necessary to protect against national security concerns.”¹⁶ If the Commission nevertheless continues to refer such applications, “Team Telecom can and should be required to expedite its process” when little has changed since a previously reviewed and approved transaction.¹⁷ For example, applications involving “minor changes” (such as “applications involving expansion or modification to existing facilities . . . , but not a material increase in foreign ownership or control, or a change in senior management”) that are filed within five years of the previous application subject to Executive Branch review would be governed by a shorter 30-day review period.¹⁸

Implement a Transparent Process. The initial commenters uniformly support enhanced transparency measures. As noted above, early identification of any Executive Branch concerns will enhance transparency. Additionally, parties agree with Sprint that identifying contacts at the Executive Branch agencies “will provide transparency to the review process and facilitate good communications from the outset,”¹⁹ thereby “enabling the applicant to gain insight into, and address any particular Team Telecom concerns.”²⁰

¹⁶ BT *et al.* Comments at 8.

¹⁷ Level 3 Comments at 9.

¹⁸ *Id.*

¹⁹ Hibernia/Quintillion Comments at 9.

²⁰ BT *et al.* Comments at 16.

CONCLUSION

Sprint applauds the Commission's efforts to streamline the Executive Branch review process and respectfully urges the Commission to adopt the reforms set forth herein. These reforms will further the Commission's goals of timeliness and transparency, thereby fostering regulatory certainty, encouraging investment, and advancing national security.

Respectfully submitted,

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